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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of	)	
	)	
Implementation of Section 17	)	
of the Cable Television	)	
Consumer Protection and	)	ET Docket No. 93-7
Competition Act of 1993	)	
	)	
Compatibility Between	)	
Cable System and Consumer	)	
Electronics Equipment	)	

REPLY IN SUPPORT OF JOINT PETITION FOR FURTHER RECONSIDERATION

Pursuant to Sections 1.429(g) and 1.4(h) of the Commission's rules, 47 C.F.R. §§ 1.429(g), 1.4(h), the Joint Petitioners,[1] together with additional supporting firms,[2] respectfully submit this reply in support of their May 28, 1996 petition for reconsideration (the "Joint Petition").

The only opposition to the Joint Petition comes from CEMA, NCTA and Circuit City, all of whom have an interest in the existing, closed process of cable compatibility standards development. Contrary to the opponents' claims, the Joint Petition is a timely vehicle for Commission consideration—in a fair and public manner—of the necessary

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[1] The parties to the Joint Petition for Further Reconsideration were: Apple Computer, Inc., Detroit Edison Company, Echelon Corporation, Global Village Communication, Inc., Kleiner Perkins Caufield & Byers, Novell, Inc., Stratacom, Inc., and Sun Microsystems, Inc. Stratacom has recently been acquired by Cisco Systems, Inc., which is a party to this Reply.

[2] The additional parties joining this Reply are: American Innovations, Ltd., Central & South West Communications, Inc., Enernet Corporation, EUA Cogenix Corp. d/b/a EUA Day, Intel Corporation, IntelliNet, Inc., Leviton Manufacturing Co., Inc., LightMedia Interactive Corp., Netscape Communications Corp., Pensar Corporation, Silverthorn Group, Inc., Solution Enterprises, Inc., Venrock Associates, Wisconsin Public Service Corp., and WISVEST Corporation.

changes to Commission policy occasioned by the landmark Telecommunications Act of 1996.[3]

Section 301(f) of the 1996 Act, which was opposed by the same parties now seeking to block reconsideration, restructured the Commission's standards-setting authority for cable compatibility. If the Commission accepts the invitation of the opponents to allow the *status quo* to continue, it will miss an important opportunity to facilitate public debate on the significant legal and policy issues raised by the Joint Petition, and will be unable to meet Congress' command that the FCC "promptly complete its pending rulemaking on cable equipment compatibility"[4] The scope and functionality of a standard necessary to comply with the 1996 Act are questions that can and should be decided now, whether or not the CEMA/NCTA negotiations—approaching their ten-year anniversary—are ever successfully concluded.

INTRODUCTION

The Joint Petitioners reflect a wide array of industries, from home automation, computer software and Internet communications to equipment manufacturing and electric utilities, that have not been included in development of the CEMA/NCTA so-called "Decoder Interface" standard for achieving compatibility of cable programming and television equipment The Joint Petitioners have asked the Commission simply to reconsider its April 10, 1996 Order[5] in this docket in order to decide—in a deliberate

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[3] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)(to be codified at 47 U.S.C. § 151 *et. seq.*)("1996 Act").

[4] *Joint Explanatory Statement of the Committee on Conference,* H. Rep. No. 104-458, 104th Cong., 2d Sess. 170-71 (1996).

[5] *Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992—Compatibility between Cable Systems and Consumer Electronics Equipment,* ET Docket No. 93-7,
(Footnote continued on next page)

manner, with input from all potentially affected industries—on the appropriate scope and functionality of any FCC standard for cable compatibility. Particularly in light of passage of the Section 301(f) of the 1996 Act (the "Eshoo Provision"), the Joint Petitioners suggest that the Commission must move rapidly, with a public notice and comment cycle, to "reevaluate the appropriateness" of the Decoder Interface under the 1996 Act's narrower charter for Commission cable equipment compatibility standards.[6]

The opponents of reconsideration are the very firms that have benefited from the failure of the Commission over the past four years either to complete this rulemaking or to fulfill its promise to seek public comment on the Decoder Interface.[7] Under their approach, the Commission could do nothing until the time—if ever—that the Cable Consumer Electronics Compatibility Advisory Group ("C3AG") submits a "final" standard for FCC review. The opponents claim, inconsistently, that discussion of the Decoder Interface is premature until they have completed all details of their proposal, and that the Joint Petitioners have not "substantiated" or "proven" that the Decoder Interface is unlawful under Section 301(f).

These arguments fail to address two uncontested facts. First, it is the responsibility of the Commission, not the consumer electronics or cable television industry associations, to decide the impact of Section 301(f) on FCC policy in this proceeding. Second, whether the Decoder Interface complies with Section 301(f) is the very issue on which the Joint Petitioners have requested that the Commission solicit public comment.

Memorandum Opinion & Order, FCC 96-129 (released April 10, 1996), 61 Fed. Reg. 18,508 (April 26, 1996)(*"Reconsideration Order"*).

[6] Joint Petition at 2.

[7] *See* Joint Petition at 2 & n.5, 5 & n.10.

The Commission examined the scope and functionality of the Decoder Interface prior to passage of the 1996 Act, and should reexamine it now under the new constraints of Section 301(f). Whether or not the opponents are correct, the Commission cannot fairly deny the public—and the other affected industries, represented by the Joint Petitioners—an opportunity to comment on how the FCC's policies regarding the Decoder Interface must be modified to come into consistency with the 1996 Act. That the opponents insist the answer is "none at all" does not mean the question should not be debated publicly, instead of in *ex parte* meetings and behind closed doors.

DISCUSSION

The Commission was originally tasked to "ensure" compatibility between TVs, VCRs and cable "set-top box" converters under Section 624A of the Communications Act, added by the 1992 Cable Act.[8] The "Eshoo Provision" modifies this command, finding that the Commission must achieve compatibility with "narrow technical standards" that "maximize competition" for functions other than descrambling of cable programming and directing that any FCC standard may "not affect" features, functions or protocols in unrelated markets such as computer network services and home automation communications.[9]

The heart of the Eshoo Provision is currently Section 624A(c)(2)(D) of the Communications Act, in which the Commission is instructed to "ensure that any standards

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[8] Cable Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, § 17 (1992) (codified at 47 U.S.C. § 544a).

[9] Section 301(f) of the Act limits the Commission's cable equipment compatibility authority by requiring the Commission (1) to achieve compatibility with "narrow technical standards," (2) to "maximize competition" for all "features, functions [and] protocols" of set-top boxes, and (3) to craft compatibility rules that "do not affect . . . telecommunications interface equipment, home automation

(Footnote continued on next page)

or regulations" for cable compatibility "do not affect features, functions, protocols and other product and service options, other than those specified in paragraph (1)(B)." The cross-reference is to the three specific incompatibilities required to be rectified by the 1992 Act, commonly known as "watch and record," "sequential recording," and "advanced TV receiver features" such as picture-in-picture. Thus, the plain language of Section 301(f) of the 1996 Act tells the Commission that its cable compatibility standard cannot "affect" functionalities that are not required for resolving the limited problems created by scrambling of cable television programming.[10]

CEMA, NCTA and Circuit City all oppose the Joint Petition with three contentions, ignoring the plain language of Section 301(f). First, they claim that the Joint Petition is "premature" because "there is no Decoder Interface standard now before the Commission."[11] Second, they maintain that the Joint Petitioners have "failed to explain why the Decoder Interface is inconsistent with the requirements of new Section 624A(C)(2)(D)."[12] Third, they argue that "the Commission has the statutory authority to adopt the Decoder Interface to achieve the goals of Section 304" of the 1996 Act on "commercial availability" of cable set-top boxes.[13] None of these is correct.

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communications, and computer network services." The complete text of Section 624A of the Act, as amended by Section 301(f) of the 1996 Act, is attached as Exhibit A to the Joint Petition.

[10] This is the precise significance of the congressional directive, now Section 624A(C)(1) of the Act, that the Commission consider "the need to maximize open competition in the marketplace" for all "features, functions [and] protocols .... unrelated to the descrambling or decryption of cable television signals."

[11] CEMA Opposition at ii; NCTA Opposition at 5-6; Circuit City Opposition at 19, 22.

[12] CEMA Opposition at ii; NCTA Opposition at 9. Circuit City does not assert that the Decoder Interface complies with Section 301(f), and appears to concede that under the Act, "the Commission may indeed need to make changes" in the proposed standard. Circuit City Opposition at 24.

[13] CEMA Opposition at iii; Circuit City Opposition at 21-22. NCTA does not address Section 304.

The first issue raised by the opponents represents procedural sleight-of-hand. The C3AG filed a proposed Decoder Interface standard with the Commission in August 1994; whether or not one of the trade associations "subsequently withdrew its support for that standard," CEMA Opposition at 3, the fact of the matter is that the responsibility for adopting cable compatibility regulations and standards rests with the Commission, not CEMA's TV and VCR manufacturer members. Moreover, the Joint Petitioners have not asked the Commission to rule on whether the current Decoder Interface standards documents produced by C3AG comply with Section 301(f), but only to reevaluate the appropriate scope and functionality of a Decoder Interface under the new limitations of the Eshoo Provision. The Commission assured the House Telecommunications Subcommittee this Spring that it would do just that:

> [T]he Commission is fully aware of the amendments to Section 624A of the Communications Act, addressing cable equipment compatibility, and the directive therein that the objectives of Section 624A can be "assured with narrow technical standards that mandate a minimum degree of common design and operation." . . . We are working with the developers of the Decoder Interface to ensure that any further technical regulations we may adopt will fully comply with Section 301(f) of the 1996 Act.

Responses to Questions of the House Subcommittee on Telecommunications and Finance on Reform of the Federal Communications Commission, March 27-28, 1996, at 7-8.

The problem is that the Commission has not provided any instructions to the C3AG on how to restructure the Decoder Interface to meet the commands of Section 301(f). Nor, however, has the Commission solicited input from firms in the industries potentially affected by the Decoder Interface, and specifically listed in Section 624A(C)(2)(D)—including home automation and computer networking. The Joint Petitioners are representatives of these industries, and their comments on the appropriate

scope and functionality of the Decoder Interface are at least as worthwhile for inclusion in the record as those of CEMA and NCTA.

There is good reason for the Commission to address now the impact of the Eshoo Provision on the structure of a Decoder Interface solution. First, the Decoder Interface includes a variety of functionalities (such as "feature units") that are completely unrelated to descrambling.[14] Second, as CEMA conceded with its February 1995 proposal for a "descrambling-only" standard,[15] there are a spectrum of alternative ways to achieve cable compatibility without the Decoder Interface's architecture, functionalities or protocol. If, on the other hand, the Commission waits for C3AG to produce a "final" standard, these problems and alternatives will never have been explored, leaving the agency with little or no flexibility. Consequently, it is not "premature" for the Commission to open up the Decoder Interface process for public debate on how to comply with Section 301(f) of the 1996 Act, rather it is instead well *past* the time when the Commission should have done so.

The opponents' contention that the Joint Petitioners have not substantiated precisely how the present Decoder Interface draft specification violates Section 301(f) is true, but irrelevant.[16] The Joint Petition did not attempt to prove—and need not establish—that the Decoder Interface is unlawful. At the same time, the record in this pro-

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[14] *See* Joint Petition at 6 (Section 301(f) "raises a serious question" whether a cable compatibility standard can include "a uniform means of connecting non-security modules to TVs and VCRs").

[15] Statement of the Consumer Electronics Group of the Electronics Industries Association Regarding the Decoder Interface, ET Docket No. 93-7 (filed Feb. 3, 1995); EIA/CEG Ex Parte Presentation, ET Docket No. 93-7 (Feb. 21, 1995).

[16] Neither CEMA, NCTA nor Circuit City explains how it can be "premature" to address the lawfulness of the Decoder Interface and yet clear at the same time, as they assert, that the Decoder Interface is entirely legal under Section 301(f).

ceeding is replete with post-1994 filings, by Echelon, Bell Atlantic[17] and others, specifying the harmful and exclusionary effects of the Decoder Interface on unrelated markets. CEMA itself has reported to the Commission that the Decoder Interface incorporates large elements of a CEMA-sponsored home automation protocol,[18] which is *only one of a number of rival technologies competing to automate American homes for lighting, security, entertainment and related functions.* Thus, there is no question that the issue of how to harmonize the Decoder Interface with the commands of Section 301(f)—including its specific requirement that any standard "not affect . . . home automation communications"—is a legitimate one for public comment and debate.

The opponents' final claim is that the Commission can lawfully adopt the Decoder Interface as part of its authority under Section 304 of the Act. This is hardly a bar to granting the reconsideration relief requested in this proceeding. The Joint Petition asks that the Commission "reconsider and clarify its position on the Decoder Interface"—because the April 10 Order appears to suggest the Commission has already adopted the standard—and "promptly issue a Public Notice in this docket seeking comment from all potentially affected industries on the appropriate means of achieving Congress' new mandate for 'narrow technical standards' on cable equipment

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[17] As Bell Atlantic advised the Commission more than a year ago, the Decoder Interface artificially positions the TV set as the "gatekeeper" to the integrated, broadband "information superhighway" of the future. Bell Atlantic Ex Parte Presentation, ET Docket No. 93-7, Slide 7 (May 31, 1995). The Commission has also recognized this problem. "[W]e also appreciate that [the Decoder Interface] could constitute a gateway that constrains the development of new technologies. Moreover, the potential for such a constraining effect is substantially greater in the current period, where there is rapid development of new communications technologies and services that are distinctly different from those available in the past." *First Report and Order*, 9 FCC Rcd. at 1987.

[18] "The Decoder Interface message protocol is defined by EIA IS-60. IS-60 is a home automation standard developed over a period of eight years and designed to support the present and future needs of a wide spectrum of consumer products." Proposal of the Consumer Electronics Group of the Electronics Industries Association for a Decoder Interface Standard, ET Docket No. 93-7, at 8 (filed Aug. 15, 1994).

compatibility."[19] Whether or not the Commission may have power under another section of the 1996 Act to promulgate a "commercial availability" standard is not germane to how the Commission complies with its cable compatibility obligations. Thus, regardless of whether the Decoder Interface proponents choose at some later date to propose their work for Commission adoption under Section 304,[20] the FCC is still required to promulgate cable compatibility rules, and to "promptly complete its pending rulemaking on cable equipment compatibility."[21]

The only way for the Commission to discharge its responsibility of creating narrow cable compatibility rules that "do not affect" features, functions or protocols in the home automation market and other unrelated industries is to open up this docket for public debate on the appropriate Commission policy for cable compatibility in light of enactment of the "Eshoo Provision." The Joint Petition asks no more than that the Commission make clear that it has not already approved the Decoder Interface standard, and that it solicit public comment on how to comply with the cable compatibility provisions of the 1996 Act. The three oppositions filed against the Joint Petition never directly address this simple request, and thus fail to present any legitimate reason for further Commission delay in this area.

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[19] Joint Petition at 8.

[20] The Commission has advised Congress that under Section 304, "no decisions have been made with respect to whether any government standards are necessary, much less what type of standards might be required." *Responses to Questions of the House Subcommittee on Telecommunications and Finance on Reform of the Federal Communications Commission*, March 27-28, 1996, at 7.

[21] Several prominent members or Congress recently wrote the Commission to express their concern that the Commission has "announced a self imposed timeframe for implementing [Section 304], which involves highly complex issues but carries no statutorily-impoed timeframe or deadline." Letter from Senators Pressler, Burns and Faircloth and Reps. Gingrich and Linder to Reed E. Hundt, dated May 20, 1996, at 1. Section 624A, in contrast, has a statutory deadline for Commission action (May 1994) that, unfortunately, has long ago passed.

CONCLUSION

The Commission should reconsider and clarify its position on the Decoder Interface, as set forth in the *Reconsideration Order,* and promptly issue a Public Notice in this docket soliciting comment from all potentially affected industries on the appropriate means of achieving cable equipment compatibility within the constraints of Section 301(f) of the 1996 Act.

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LIGHTMEDIA INTERACTIVE CORP.
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PENSAR CORPORATION
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served this 18th day of July, 1996, by send a copy thereof by first-class mail, postage prepaid, to the persons listed below.

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